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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,766	12/28/2000	Brian B. Egan	NTL-3.2.172/3666	8660
35437	7590	06/07/2004	EXAMINER	
MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO 666 THIRD AVENUE NEW YORK, NY 10017			HAN, CLEMENCE S	
		ART UNIT	PAPER NUMBER	
		2665	8	

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/750,766

**Applicant(s)**

EGAN ET AL.

**Examiner**

Clemence Han

**Art Unit**

2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### **Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### **Disposition of Claims**

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### **Attachment(s)**

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br/>                     Paper No(s)/Mail Date _____.</li> </ol> | <ol style="list-style-type: none"> <li>4)<input type="checkbox"/> Interview Summary (PTO-413)<br/>                     Paper No(s)/Mail Date. _____.</li> <li>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6)<input type="checkbox"/> Other: _____.</li> </ol> |
|---|---|

## **DETAILED ACTION**

### ***Claim Objections***

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. They must be numbered consecutively. Misnumbered claim 12–26 have been renumbered 10–24, respectively.
2. Claim 11, 15–19 and 21–24 are objected to because of the following informalities: Required renumbering above render the claim's dependency indefinite. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 12 recites the limitation "the indication" in the line 3 of the claim. There is insufficient antecedent basis for this limitation in the claim.
6. Claim 13 recites the limitation "the voice over IP devices" in the line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claim 1–24 are rejected under 35 U.S.C. 102(e) as being anticipated by LeBlanc (US Pub. 2002/0075857).

In regarding to claim 1, 14 and 20, LeBlanc teaches a method of voice optimization in a packet switched network, comprising: initializing default parameters for end-point devices on a network with respect to choice of preferred CODEC, number of voice samples per packet, and jitter buffer size; measuring performance parameters of a network [0126]; and evaluating whether the measured performance parameters signify that a connection to the network is below a desired level of operation 1010, 1030 and, if so, adjusting the default parameters for the end-point devices based on the evaluating 1040, 1050.

In regarding to claim 2, 18 and 23, LeBlanc teaches the adjusting includes performing functions that are selected from a group consisting of re-negotiating a

CODEC connection, re-setting of parameters for the packet size and re-setting the jitter buffer [0122].

In regarding to claim 3, 5, 11, 15 and 21, LeBlanc teaches the performance parameters being measured are selected from a group consisting of throughput, latency, packet loss, bandwidth, number of network hops to the end-point devices, round trip delay and any combination thereof [0007].

In regarding to claim 4, 6, 16, 17 and 22, LeBlanc teaches the measuring is performed with at least one tool selected from a group consisting of a ping tool, a network trace tool and a packet loss measurement tool [0119].

In regarding to claim 7 and 8, LeBlanc teaches the adjusting is manually initiated by a user [0030].

In regarding to claim 9, 19 and 24, LeBlanc teaches registering the end-point devices with a private branch exchange (PBX) on the network, wherein said PBX measures performance parameters between the PBX and the end-point to determine the default parameters [0022].

In regarding to claim 10, LeBlanc teaches measuring and evaluating existing performance parameters with respect to quality of connection, the initializing being based on the evaluating [0127].

In regarding to claim 12, LeBlanc teaches evaluating the measured performance parameters with respect to quality of connection and making the indication as a result of the evaluating [0127].

In regarding to claim 13, LeBlanc teaches the adjusting is carried out during transmission of media to the voice over IP devices [0040].

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to the voip in general.

U.S. Patent 6,421,720 to Fitzgerald

U.S. Patent 6,434,606 to Borella et al.

U.S. Patent 6,542,499 to Murphy et al.

U.S. Patent 6,683,889 to Shaffer et al.

U.S. Patent 6,445,697 to Fenton

U.S. Pub. 2002/0016937 to Hou

U.S. Pub. 2002/0114285 to LeBlanc

U.S. Pub. 2003/0227908 to Scoggins et al.

U.S. Pub. 2002/0101886 to Jagadeesan

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clemence Han whose telephone number is (703) 305-0372. The examiner can normally be reached on Monday-Friday 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (703) 308-6602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*C. H.*  
Clemence Han  
Examiner  
Art Unit 2665



HUY D. VU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600